

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

WENDY SINGERY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 10-0577-CV-W-HFS
	)	
JOSE E. LEAL, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM TO COUNSEL**

The parties have reported a discovery dispute regarding questions asked by defense counsel at plaintiff's deposition. This is a personal injury action arising from a collision between a motor vehicle and a semi tractor trailer. At the deposition, defense asked plaintiff about whether she was seeking care and treatment for psychiatric issues. Plaintiff's attorney directed her client not to answer, stating because her client was not making an emotional distress claim, the question was not reasonably calculated to lead to the discovery of admissible evidence.

Defendant argues that it has "reason to believe" that plaintiff's psychological issues may have contributed to the accident and may relate to her physical symptoms and complaints. Plaintiff asserts she is not making any claims relating to her mental, emotional or psychological condition, so the physician/patient privilege has not been waived, citing State ex rel. Dean v. Cunningham, 182 S.W.2d 561, 566-68 (Mo. en banc 2006).

Federal Rule of Civil Procedure 30(c)(2) provides in part that an attorney may instruct the client not to answer "when necessary to preserve a privilege." Here, the physician/patient privilege was at issue, so plaintiff's attorney was within her rights to instruct her client not to answer.

Plaintiff's complaint does not assert any claim for emotional distress or allege any psychological injury as a result of the accident. Although defendant contends that it has "reason to believe" plaintiff's psychological condition is at issue, it offers no explanation for this inference. Without more, the court finds no basis to compel plaintiff to waive the physician/patient privilege by answering questions about her psychological condition.

/s/ Howard F. Sachs  
HOWARD F. SACHS  
UNITED STATES DISTRICT JUDGE

March 7, 2011

Kansas City, Missouri